

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 544 675
Issued to: Martin H. IAUKEA

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2352

Martin H. IAUKEA

This appeal was taken in accordance with Title 46, United States Code 239(g) and 46 CFR 5.30-1.

By order dated 25 August 1982, and Administrative Law Judge of the United States Coast Guard at Seattle, Washington suspended Appellant's seaman's license for six months on twelve months' probation, upon finding him guilty of "inattention to duty". The specification found proved alleges that while serving as Chief Mate on board the United States M/V CATHLAMET under authority of the license above captioned, Appellant did on or about 0545, 21 April 1982 while said vessel was at the Mukilteo Ferry Terminal, Mukilteo, Washington, wrongfully fail to perform assigned duties on the vessel's car deck during unloading operations.

The hearing was held at Seattle, Washington on 22 June 23, June, 29, June, 30 June, 1 July and 2 July 1982.

At the hearing Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence 16 exhibits and the testimony of five witnesses.

In defense, Appellant introduced in evidence 26 evidence 26 exhibits and the testimony of 5 witnesses including testifying in his own behalf.

After the hearing the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending all licenses issued to Appellant for a period of six months on twelve month's probation.

The entire decision was served on 27 August 1982. Appeal was timely filed on 24 September 1982 and perfected on 21 April 1983

FINDINGS OF FACT

On 21 April 1982, Appellant was serving as Chief Mate on board the United States M/V CATHLAMET and acting under authority of his license while the vessel was at the Mukilteo Ferry Terminal, Mukilteo, Washington.

The M/V CATHLAMET is a ferry vessel owned by the State of Washington, Department of Transportation and operated by the State. On 21 April 1982, the vessel was operating between the Clinton Dock on Whidbey Island, and the Ferry Terminal at Mukilteo. A one way trip took approximately fifteen minutes.

The terminal at Mukilteo had undergone reconstruction, and was re-opened to traffic on 19 April 1982. However, the right dolphin was under construction and the construction of the left dolphin had not been started. These are pile dolphins and assist in preventing the stern of the ferry from swinging while at the dock.

The M/V CATHLAMET departed Clinton at 0530 on 21 April 1982 with approximately 50 automobiles, several motorcycles and a number of pedestrians, and arrived at Mukilteo at approximately 0545. While vehicles were being unloaded, the current caused the stern of the vessel to swing. This created a gap between the vessel's bow and the dock. As a result, an automobile was stranded with its front wheels resting on the dock while the rear wheels remained on the vessel. There were two able seamen present. They helped the passengers get out of the imperiled automobile. Fortunately, no one was injured. The automobile eventually fell into the water.

It was the Chief Mate's duty to supervise unloading of the vehicles. Appellant, however, was not on the car deck during the initial off loading, including the time of this incident. The Master had directed him to write an econogram regarding a missing lip from the apron at the Clinton dock and have it prepared for delivery to the dock agent at Mukilteo. In addition, the Fleet Coordinator of the State Ferry System had told Appellant to keep an eye on an ordinary seaman whose performance needed observing. Shortly after departing Clinton, Appellant went to the pilothouse not in use, and began drafting the econogram. He was drafting it when he heard the engines change speeds. This indicated that the vessel was four minutes from Mukilteo. Appellant then completed his thoughts, and took the incomplete message draft to the Second Mate's office. Before going to the car deck, he decided to search for the ordinary seaman whom he had been told to watch. The second time he circled the passenger deck, Appellant found the seaman. They were walking through the cabin toward the shore end of the vessel when the deck alarm sounded, due to the stranded automobile.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant contends that:

1. The standard of care which Appellant is alleged to have violated is not established by substantial evidence;
2. If a standard of care is established, Appellant's violation of it is justified; and
3. In light of the remedial nature of the regulations governing administrative proceedings the sanction was excessively and inappropriately severe.

APPEARANCE: Moriarty, Mikkeltorg, Broz, Wells & Thyer by Jacob A. Mikkeltorg and Watson B. Blair

OPINION

I

Appellant contends that the existence of the duty which he failed to perform was not established by substantial evidence. I disagree.

Appellant was charged with inattention to duty which is defined in 46 CFR 5.05-20(a)(2) as follows:

"Negligence" and "inattention to duty" are essentially the same and cover both the aspects of misfeasance and nonfeasance. They are therefore defined as the commission of an act which a reasonably prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonable prudent person of the same station, under the same circumstances, would not fail to perform.

Appellant argues that the only evidence offered by the Coast Guard to establish his duty are Washington State Ferry Policy Circular Nos. 06 and 24. These set forth his duty as follows:

Policy Circular No. 06 "The Master is responsible for instructing the Mate to be on the bow of the car deck, with seamen, during all docking".

Policy Circular No. 24 "On arrival ... the Mate is to drop the safety line and begin moving the vehicles as soon as the apron is set on the vessel's bow and the vessel is otherwise safe and properly secured".

Formally established vessel procedures are sufficient to create a duty on the part of officers and crew of a vessel. Violation of those procedures can support a charge of negligence or inattention to duty. See Appeal Decision Nos. 2287 (RICKER) and 2232 (MILLEN). Thus, Circular Nos. 06 and 24 established a duty on the part of Appellant.

In addition, the subject of the policy circular discussed above is "Safety Rules in Vessel Operations." This strongly suggests that the policy circular were promulgated in the interest of safety. A policy adopted in the interest of safety is a rule which establishes the standard for measuring conduct in these proceedings. Appeal Decision No. 1567 (CASTRO).

There is no merit to Appellant's argument that a duty was not established.

II

Appellant urges that even if a duty were established, his violation of it was justified. I disagree.

Appellant argues that since the Master had directed him to prepare an econogram immediately, concerning damage at the Clinton dock, and the Fleet Coordinator had directed him closely supervise an ordinary seaman, these instructions excused the failure to perform his usual duties. The Administrative Law Judge, however, found that neither of these tasks was of substantial significance and both could have been left for a more opportune time. I believe this a reasonable conclusion based on the evidence. Appellant's duty, as set forth in the written instructions, required him to be at the bow of the vessel while unloading vehicles. His presence was necessary to ensure the safety of debarking passengers. He failed to fulfill that duty while attending to administrative details. There is no evidence to support the argument that completion of an econogram and the supervision of a seaman were so critical that it made supervising the unloading secondary. Since the Administrative Law Judge's determination is supported by the evidence and reasonable under the circumstances, it will not be disturbed.

III

Appellant contends that the sanction imposed by the Administrative Law Judge is excessively and inappropriately severe. I disagree.

Appellant urges that the Administrative Law Judge had no basis for imposing a sanction in excess of the average order for

"inattention to duty" in consideration of the circumstances of the case and the prior record of Appellant. The Administrative Law Judge, however, is not bound by the Table of Average Orders found in 46 CFR 5.20-165 in determining an appropriate sanction. The regulation, on its face, states that the table is provided for guidance only and is not intended to limit the orders of the Administrative Law Judge. See also Decision on Appeal No. 2313 (STAPLES).

The order in a particular case is peculiarly within the discretion of the Administrative Law Judge and absent some special circumstance, will not be disturbed on appeal. Decision on Appeal No. 1585 (WALLIS). I do not find this case to be one of special circumstances and will not disturb the Order.

CONCLUSION

There is sufficient evidence of a reliable and probative character to support the findings that the charge and specification are proved. The hearing was conducted in accordance with applicable regulations.

ORDER

The order of the Administrative Law Judge dated at Seattle, Washington on 25 August 1982 is AFFIRMED.

B.L. STABILE
Vice Admiral, U.S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C., this 22nd day of May 1984.